



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that the tenant handed him a copy of the tenant's dispute resolution hearing package on June 7, 2013. I am satisfied that the tenant served this package to the landlord in accordance with the *Act*.

Although the tenant's advocate (the advocate) had submitted some limited written evidence to the Residential Tenancy Branch (the RTB), he advised that he had not provided a copy of this evidence to the landlord. He gave undisputed testimony that the landlord had a copy of the Intent to Rent form for this tenancy, a document sent to the Ministry of Social Development (the Ministry) in order to obtain shelter assistance for the tenant. As the landlord apparently had a copy of the Intent to Rent form, I have taken this document into consideration in reaching my decision. I have not considered any of the tenant's other written evidence as this was not provided to the landlord in advance of this hearing. The landlord did not submit any written evidence.

At the commencement of this hearing, the parties agreed that the landlord had returned the tenant's \$100.00 security deposit. As such, the tenant has already obtained the objective he was seeking with respect to his security deposit. The tenant's application to obtain a return of his security deposit is withdrawn.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy?

Background and Evidence

Both parties agreed that they had an oral agreement whereby the tenant would move into this basement rental unit as of June 1, 2013. The landlord did not dispute the claim of the tenant and his advocate that the landlord signed an Intent to Rent Form, a Ministry document, in which the tenant was to commence paying monthly rent of \$550.00 as of June 1, 2013. The parties also agreed that their agreement called for the tenant's payment of a \$275.00 security deposit.

The landlord did not dispute the tenant's claim that the tenant handed the landlord two cheques totalling \$650.00 (cheques of \$275.00 and \$375.00) approximately one week before the tenancy was to begin.

The tenant testified that when he attended the rental property on June 1, 2013, to pick up the keys, the landlord refused to allow him to take up occupancy until such time as the full \$275.00 security deposit had been paid. By then, the landlord had cashed the tenant's two cheques totalling \$650.00. The tenant said that he requested a return of his \$650.00 payment at that time. After applying for dispute resolution, the parties agreed that the landlord returned the tenant's \$100.00 security deposit. The landlord testified that the tenant signed an agreement when he obtained the return of his security deposit in which the tenant stated that this payment resolved the tenant's concerns. The tenant denied that his signed statement was anything other than confirmation that he had received the \$100.00 return of his security deposit. Although the landlord said that he could obtain a copy of that statement from his daughter, he had few details regarding the actual terms of this statement. I denied the landlord's request to be given permission to submit this written evidence after this hearing. I noted that the time to present and submit written evidence was before and not after this hearing.

The landlord said that the tenant approached him a few days before June 1, 2013, to let the landlord know that he had changed his mind about renting at this location. He confirmed that he had cashed the tenant's two cheques totalling \$650.00 by the time the tenant told him that he would not be moving into this rental unit. The landlord said that he told the tenant that he would only return a portion of the tenant's June 2103 rent if he could re-rent the premises for a portion of that month. He said that he did try to rent the basement unit during June, but was unable to locate another tenant until someone rented the premises as of August 15, 2013. The landlord gave sworn testimony that he never told the tenant that he was refusing to let him move into the rental unit until such time as the tenant had paid his entire security deposit.

The advocate testified that the tenant was homeless during the first weekend of June and attended the advocate's office the following Monday. The advocate gave

undisputed sworn testimony that he noticed an advertisement for this rental unit on a popular rental website on June 13, 2013. The advocate placed a call to the landlord who confirmed that it was for the same rental unit as was involved in the tenant's application. The advocate gave undisputed testimony that the ad was not placed on the website until at least June 7, 2013. The advocate maintained that this evidence showed that the landlord had not taken reasonable steps to try to mitigate the tenant's losses for June 2013.

Analysis

The lack of written evidence from both parties presents problems for obtaining verification of their sworn oral testimony. Without documentary evidence, I am left with conflicting accounts as to why the tenant did not move into this rental unit.

The parties agreed that the tenant paid his June 2013 rent in full approximately one week before June 1, 2013. They also agreed that the landlord cashed the tenant's \$650.00 in rent and security deposit cheques. They also agreed that the landlord has returned the tenant's security deposit of \$100.00.

Based on a balance of probabilities, I think it more likely than not that the landlord refused to allow the tenant to move into this rental unit without receiving the tenant's security deposit in full. In coming to this conclusion, I think it unlikely that the tenant would pay the landlord his full June 2013 rent, allowing the landlord to cash his rent cheque for that month, if he were not fully planning to commence his tenancy on June 1, 2013. There are remedies available to a landlord who has not received a full security deposit. Under such circumstances, a landlord can issue a 1 Month Notice to End Tenancy for Cause. However, without a valid Order of Possession, a landlord cannot arbitrarily decline to allow a tenant to commence a tenancy on the date that he had agreed to allow the tenancy to begin. I find that the tenant is entitled to a monetary award for the June 2013 rent he paid to the landlord.

Section 7(2) of the Act places a responsibility on a landlord to do whatever is reasonable to minimize a tenant's loss. Even if I were to have accepted the landlord's claim that the tenant changed his mind at the last minute about commencing this tenancy, I do not find that the landlord has provided sufficient evidence to demonstrate that he attempted to mitigate the tenant's losses for June 2013. In this case, the landlord provided only vague information about when and how he tried to locate another tenant for this basement suite. I find that the most detailed and specific evidence given in this regard was from the advocate who claimed that the landlord did not begin trying to rent this suite until at least June 7, 2013, well after the tenancy was to have commenced.

Although the tenant has asked for a monetary award of \$1,000.00, neither he nor his advocate produced any specific evidence to demonstrate that the tenant suffered actual losses in excess of the \$550.00 the tenant paid to the landlord. Under these circumstances, I find that the tenant is entitled to a monetary Order of \$550.00, the undisputed amount of rent he paid to the landlord for June 2013. This monetary Order compensates the tenant for the actual losses he demonstrated.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$550.00 for losses arising out of this tenancy. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 09, 2013

Residential Tenancy Branch

